

**Pacific Micronesia Corporation d/b/a Dai-Ichi Hotel  
Saipan Beach and Commonwealth Labor Fed-  
eration & Hotel Employees & Restaurant Em-  
ployees, Local 5, AFL-CIO, Joint Petitioners.**  
Case 37-RC-3739

August 27, 1998

**ORDER DENYING REVIEW**

BY CHAIRMAN GOULD AND MEMBERS FOX AND BRAME

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Supplemental Decision on Challenged Ballots and Objections to Conduct of Second Election, and Certification of Representative (pertinent portions of which are attached as an Appendix).<sup>1</sup> The request for review is denied as it raises no substantial issues warranting review.<sup>2</sup>

**APPENDIX**

**REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION  
ON CHALLENGED BALLOTS AND OBJECTIONS TO  
CONDUCT OF SECOND ELECTION. AND CERTIFICA-  
TION OF REPRESENTATIVE**

Pursuant to a Decision and Direction of Second Election issued by the Board on September 24, 1997, an election by secret ballot was conducted on February 5, 1998, among the employees in the following appropriate collective-bargaining unit:

All full-time and regular part-time employees employed by the Employer in the Commonwealth of the Northern Mariana

<sup>1</sup> Review was requested solely with respect to Objections 1, 2, 3, and 4.

<sup>2</sup> In denying review, we agree with the Regional Director's conclusion that Objection 4, which alleged that a supervisor intimidated the Employer's election observer into withdrawing and forcing the Employer to choose a substitute, should be overruled, but for different reasons from those set forth by the Regional Director. The Regional Director found that Annamae Adaza, as a supervisor, would not have been permitted to be an election observer for the Employer. However, Marilou "Lulu" Thomson, not Adaza, was the chosen election observer; Adaza did not suggest that she, herself, wished to serve as observer.

Further, we find it unnecessary to determine whether the Employer was estopped from relying on Adaza's "misconduct" as objectionable. Adaza did not engage in any conduct which interfered with the employees' free choice in selection of a representative. Adaza did not act in a manner with respect to Thomson that would coerce Thomson into supporting Joint Petitioners because of fear of retaliation or hope of reward. Nor did Adaza intimate retaliation against Thomson if she remained an observer. At most, Adaza's "threat" constituted a message to the Employer that if it used Thomson as an observer, employees would be more likely to vote for the Joint Petitioners. Such a message does not constitute objectionable conduct, particularly where, as here, there is no claim or evidence that Adaza's statement was disseminated to voters.

Chairman Gould agrees that Objection 3, alleging that the comments attributed to the Petitioner Local 5's business agent in a newspaper article contained inflammatory appeals to racial prejudice under *Sewell Mfg. Co.*, 138 NLRB 66 (1962), should be overruled for the reasons set forth in his concurring opinion in *Shepherd Tissue, Inc.*, 326 NLRB No. 38 (1998).

Islands; excluding all managerial employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

Upon the conclusion of the election, a copy of the official tally of ballots was served on the parties, showing the following results:

Approximate number of eligible voters	274
Void ballots	2
Void ballots Votes cast for Joint Petitioners	131
Votes cast against participating labor organization	121
Valid votes counted	252
Challenged ballots	9
Valid votes counted plus challenged ballots	261

The challenged ballots were not sufficient in number to affect the results of the election.

**The Challenged Ballots**

The ballots of *Annamae Adaza, Marilou Dela Cruz, Gloria Guiterrez, Cerlito Hipolito, Rosita Panqilinan, Antonia Rabe, Rina Robles, and Luisa Santiago* were challenged by the Employer on the ground that they are supervisors. The ballot of *Antonio Cabrera* was challenged by the Joint Petitioners on the ground that he is a confidential employee.

**The Objections**

On February 11, 1998, the Employer timely filed Objections to the Conduct of the Election and to Conduct Affecting the Results of the Election, a copy of which was served on the Joint Petitioners. The Objections are as follows:

*Objection 1. Invalidity of Second Election*

The election conducted in this proceeding on March 21, 1996, was a valid election. The Board's decision of September 24, 1997, setting aside the results of that election and ordering the holding of a new election on the grounds of alleged third party misconduct is at odds with the Board's prior third party interference jurisprudence, fails to explain this departure from precedent, is inconsistent with the provisions of the National Labor Relations Act ("Act") and would raise grave constitutional issues were the Act interpreted to embrace third party conduct of the kind in issue here. Consequently, the second election should be set aside and the results of the original election reinstated.

*Objection 2. Supervisory Taint*

The laboratory conditions necessary for a fair election were destroyed by the coercive conduct of several [Employer] supervisors who campaigned for the union, covertly vis-a-vis management, but actively and aggressively with respect to their subordinates—thus interfering with and chilling the employees' free and unfettered choice. Because of the closeness of the election, *any one* of these supervisors, much less all or any combination of them, had dominion over sufficient employees to reverse the outcome of the election.

A. The following supervisors, who were stipulated by the Joint Petitioners at the Representation [sic] hearing to occupy positions classified as statutory supervisors engaged in misconduct: Marilla Alarrilla, and Alex Gablinez. [The Employer] believes that other supervisors also en-

gaged in election interference and will supply further information as it comes to light.

B. Certain individuals whom the [Employer] views as supervisors, but whom the union does not (and who voted challenged ballots in the election) also engaged in improper interference. These were: Ma. Annamae Adaza and Cerlito Hipolito and at least some of the following: Marilou Dela Cruz, Gloria Guterrez, Antonia Rabe, Ma. Rina Robles and Ma. Luisa Santiago.

C. Certain supervisors, as yet unidentified, are also believed to have engaged in improper conduct.

Information concerning the supervisory misconduct has come to the [Employer's] attention either anonymously or with requests for confidentiality because of a fear of retaliation by the misbehaving supervisors. [The Employer] will endeavor to develop further direct evidence, consistently with the constraints imposed by *Johnnie's Poultry* [146 NLRB 770 (1964)]. However, the full facts are likely to be developed only by the Board's own investigation and its confidential discussions with employees, and/or with the aid of compulsory process. Otherwise, the coercive conduct of the supervisors will not only have denied the employees their free choice in a representation election, but will also have precluded the employees from obtaining redress.

#### *Objection 3. Blatant Prejudicial Appeals*

During the course of this campaign, the union, its principal spokesmen (Vie Perez, Local 5 Business Agent, and Hermie Coronejo, chief in-plant organizer) and other union agents and supporters made blatant appeals to racial, national origin and citizenship prejudice, seeking to whip up animosity between Filipino contract workers, on the one hand, and, on the other hand, locals (Chamorros and other Micronesians), Nepalese, Japanese and even IR's (immediate relatives, especially Filipino nationals married to U.S. citizens).

#### *Objection 4. Intimidation of Company Representative*

Union adherents, including Annamae Adaza, intimidated the Company's chosen election observer into withdrawing from that role and obliging the Company to choose a substitute.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I have conducted an investigation of the challenged ballots and objections and find as follows:

#### *The Challenged Ballots*

The Employer challenged the ballots of eight voters, and the Joint Petitioners challenged the ballot of one voter. As the tally of ballots indicates, these nine challenged ballots were not determinative of the election results at the time of the election. However, the nine challenges, in conjunction with subsequently filed Objection 6, could potentially be determinative of the election results.

Subsequent to the election, for purposes of resolving this election, the Joint Petitioners agreed, in writing, with the Employer that Adaza, Dela Cruz, Guterrez, Hipolito, Pangilinan, Rabe, Robles, and Santiago are supervisors. Accordingly, I sustain the challenges to their ballots and find that they were not eligible to vote in the election. Because the remaining challenge filed by the Joint Petitioners to the ballot of Cabrera is

not determinative of the election results, I find it unnecessary to rule on that challenged ballot.

I therefore issue the following revised tally of ballots:

Approximate number of eligible voters	274
Void ballots	2
Void ballots Votes cast for Joint Petitioners	131
Votes cast against participating labor organization	121
Valid votes counted	252
Challenged ballots	1
Valid votes counted plus challenged ballots	253

#### *Objection 1*

In this objection, the Employer contends that the March 21, 1996 election, was valid and should not have been set aside on the grounds of alleged third-party misconduct. As the Board has already considered this contention in its September 24, 1997 Decision and Direction of Second Election and rejected it, I find that this objection lacks merit and it is overruled.

#### *Objection 2*

The Employer submitted its evidence in support of its objections in a letter with attachments dated February 20, 1998. The letter states with regard to Objection 2, that on the day before the election, Personnel Manager Peding Sanchez received an anonymous telephone call from an employee, who stated that Marilla Alarrilla, a supervisor, was campaigning on behalf of the Joint Petitioners. A declaration by Sanchez states, in relevant part, that a female who identified herself as an employee called Sanchez at home and told her that Alarrilla had made statements in support of and urged employees to vote for the Joint Petitioners; that Alarrilla said management had been given a chance with the first election, but had not done anything for the employees, and that is why they needed to vote for the Joint Petitioners. Sanchez' declaration also states that Supervisor Romy Malabanán told her that he "suspected" another supervisor, Alex Gablinez, was involved in the writing and distribution of a flyer on behalf of the Joint Petitioners.

The Employer's letter further alleges that General Manager Izumi Kinoshita and his secretary, Rita Sablan, received telephone calls from a female, in which the caller identified several supervisors who had supported the Joint Petitioners, including Alarrilla, Gablinez, Diomedes "JoJo" Nuique, Cerito Hipolito, Romeo Barcelon, and Arthur Guerrero. A declaration by Kinoshita was submitted, but it did not provide any further detail. The Employer's letter listed "potential" witnesses to the supervisory statements to employees; the list contained all employees who were supervised by the supervisors "believed to have" campaigned for the Joint Petitioners.

In *Cal-Western Transport*, 283 NLRB 453 (1987), enfd. 870 F.2d 1481 (9th Cir. 1989), the Board outlined the following three situations in which a supervisor's conduct on behalf of the union may have an objectionable effect sufficient to warrant setting aside the election: (1) the employer takes no stand contrary to the supervisor's pronoun conduct, and employees can be led to believe the employer favors the union; (2) a supervisor's pronoun conduct could coerce employees into supporting the union out of fear of future retaliation by that supervisor; or (3) the employees could be coerced out of a hope of reward by the supervisor. Id. at 453, 455. Accord: *U.S. Family Care San Bernadino*, 313 NLRB 1176, 1176 (1994); *Sil-Base Co.*, 290 NLRB 1179, 1179 (1988). The indicia of authority a supervisor possesses are factors to be considered in evaluating whether his

or her prounion conduct could reasonably tend to coerce employees. *Cal-Western Transport*, supra at 455.

Because the Employer here clearly communicated its anti-union position to the employees, the first of the *Cal-Western* situations is not at issue. With regard to the issue of supervisory potential to retaliate against or reward employees, none of the allegations or evidence put forth by the Employer even suggests that the alleged supervisors made statements containing any hint of retaliation or reward. Indeed, this objection simply claims that supervisors campaigned for the Joint Petitioners “actively and aggressively” and engaged in “misconduct” or “improper interference.” The declarations submitted in support of this objection do not even point to any evidence of coercion because of the supervisors’ alleged behavior. See *Sutter Roseville Medical Center*, 324 NLRB 218 (1997) (employer’s evidence and offer of proof failed to establish a prima facie case of objectionable prounion supervisory conduct; employer presented no evidence of threats or promises of benefits).<sup>1</sup>

As the Board stated in *Sutter Roseville Medical Center*, slip op. at 2, “supervisory statements endorsing the union and pointing out the possible benefits of union representation . . . are not inherently coercive and are not objectionable when made without threats of retaliation or reward, [but] are permissible expressions of personal opinion.” Even if it is assumed that the persons alleged to be supervisors had supervisory authority and that the employees were aware of that authority, to be coercive, their alleged prounion conduct would have to be “so marked or inordinate as to lead the employees to fear possible retribution at [their] hands in the event that they reject the Union,” a situation which is certainly not present in this case. *Sil-Base Co.*, 290 NLRB at 1180–1181 (quoting *Stevenson Equipment Co.*, 174 NLRB 865, 866 (1969)). I therefore overrule Objection 2.

### Objection 3

In this objection, the Employer alleges that the Joint Petitioners and their agents and supporters made “blatant appeals to racial, national origin and citizenship prejudice.” According to the Employer, the Joint Petitioners attempted to create animosity between the contract workers from the Philippines and the locals (Chamorros and other Micronesians), Nepalese, Japanese, and “immediate relatives.” In support of this objection, the Employer submitted a copy of a flyer (App. A) allegedly distributed by the Joint Petitioners and a newspaper article (App. B). Although Appendix A is printed on Hotel Employees & Restaurant Employees, Local 5 letterhead, in an affidavit taken during the investigation, the Joint Petitioners denied that Appendix A is a Local 5 document or that Local 5 distributed it. Regardless of this denial, even assuming for the purpose of ruling on this objection that the Joint Petitioners were responsible for Appendix A, I find no merit to this objection.

In *Sewell Mfg. Co.*, 138 NLRB 66, 71–72 (1962), the Board stated that it would not set aside an election on the basis of racial appeals where a party limits itself to truthfully setting forth another party’s position on matters of racial interest and “does not deliberately seek to overstress and exacerbate racial feelings by irrelevant, inflammatory appeals.” Cases since *Sewell* have shown that this “rule . . . is applicable only in those

circumstances where it is determined that the ‘appeals or arguments can have no purpose except to inflame the racial feelings of voters in the election.’” *Englewood Hospital*, 318 NLRB 806, 807 (1995) (quoting *Bancroft Mfg. Co.*, 210 NLRB 1007, 1008 (1974), enf’d. 516 F.2d 436 (5th Cir. 1975), and *Sewell*). See, for example, *Zartic, Inc.*, 315 NLRB 495, 497 (1994).<sup>2</sup>

Since the Employer failed to point out which statements in the flyer it believes are impermissibly inflammatory, all statements which mention local vs. foreign contract workers or ethnic issues have been examined. There are five such statements:

[1.] For locals who worked long time in this hotel like John Mendiola, Tony Pangilinan, Antonio Camacho, Francisco, Rose Navat, and Amalia were you not insulted that an alien contract worker is receiving \$1,650 a month just for buying materials at the Engineering Department?

[2.] About the subject of dues \$26 is collected per month because their hourly rate is \$13/hour (Hawaii). In Saipan it is only \$6.40 monthly dues because Saipan workers are making \$3.05/hour. The co[m]pany lawyers knows [sic] these things only they are not telling you the truth. If during the Collective Bargaining Agreement the union will suc[c]eed in asking the company \$6.00 to \$7.00 per hour for local employees and \$4.50 to \$4.80 per hour for contract workers simple arithmetic will tell you that ordinary employee like you and me is on the win-win situation. If the company can afford to pay a Washington based lawyer for \$300 to \$400 per hour how much more for us who are the gasoline and oil in this company. Be it a local or an alien employee.

[3.] Mr. company lawyer by the way is the personnel manager right when she told those pregnant alien wom[en] that their contract will only be renewed if they will deliver in the Philippines? She once told those pregnant alien women that it is a violation of their contract to deliver here in the CNMI.

[4.] Or perhaps Iwabuchi san for allowing his ass to be kissed daily by Romy san. Take note Japanese managers it is always not good to give special preferen[t]ial treatment to anybody.

[5.] Fellow employees, we have tried working without a UNION and we are still the same—‘Poor Local and Poor Alien Workers.’ So let’s try to have one.

The above statements do not constitute irrelevant, inflammatory appeals to ethnic prejudice. To the contrary, most of these campaign statements speak in terms of the local and alien workers being in a common situation and needing the Joint Petitioners to improve everyone’s working conditions (statements 2, 4, and 5). The first statement appears to focus more on longevity and pay issues than ethnicity, appearing to be a complaint that one particular alien worker is overpaid compared to local workers. The third statement addresses the treatment of pregnant Filipino contract workers, but it speaks in terms of protecting those workers and does not denigrate any ethnic group. Although the fourth statement says that Japanese managers should not give special treatment to anyone, it certainly cannot be said that such is an attack on a particular racial or

<sup>1</sup> The evidence presented by the objecting party must establish a prima facie case in support of the objections. *Park Chevrolet-Geo*, 308 NLRB 1010 (1992). Here, the Employer has not presented any evidence which would establish a prima facie case in support of Objection 2.

<sup>2</sup> The situation in *Zartic* was subsequently described by the Board as a “near riot” by employees at an employer campaign meeting. *Cath-erine’s*, 316 NLRB 186, 186 (1995).

ethnic group sufficient to require a third election in this case. See *Englewood Hospital*, 318 NLRB 806, 807 (1995).<sup>3</sup>

In short, no suggestion was made in the flyer that workers of particular ethnic groups should not be permitted the same rights as those in other ethnic groups. A “vote for the union was represented as a vote for better working conditions, not as a vote against [another] race” or ethnic group. *Baltimore Luggage Co.*, 162 NLRB 1230, 1234 (1967), enf. 387 F.2d 744 (4th Cir. 1967).

With regard to the newspaper article, its headline—“Union decries ‘divisive’ tactics by employers”—summarizes the Joint Petitioners’ statements on the ethnic issue. The article stresses the Joint Petitioners’ claim that it was the Employer who was engaging in tactics to divide workers and contained a call by the Joint Petitioners “for unity among hotel workers.” See *State Bank of India v. NLRB*, 808 F.2d 526, 539 (7th Cir. 1986) (union’s statement urged employees to vote for the union not by appealing to and arousing their racial prejudice, but rather by contending that employer itself was taking advantage of their minority status), cert. denied 483 U.S. 1005 (1987). The article contains statements by “Local 5 spokesperson” Vic Perez that the Employer was hiring Nepalese nationals to break an “overwhelming” union vote, because Filipinos, who he said were known to be prounion, dominate the workforce. Perez is also quoted as saying that Nepalese workers were still a small percentage of the total workforce and that management was hiring them in an experimental fashion.

The article ends with statements by Ron Sablan, President of the Hotel Association of the Northern Mariana Islands, refuting the statements made by Perez. Sablan stated that Nepalese nationals were hired because of difficulties in bringing in Filipinos, which were due to new restrictions imposed by the Philippine government. Sablan also stated that the hiring policy had nothing to do with the union. See *Staub Cleaners, Inc.*, 171 NLRB 332, 333 (1968) (election not overturned where employer repudiated race-based rumor), enf. 418 F.2d 1086 (2d Cir. 1969), cert. denied 397 U.S. 1038 (1970).

In short, the Employer has not substantiated that the Joint Petitioners have made any appeals to ethnic prejudice which would require another election. I therefore overrule this objection.

#### Objection 4

In this objection, the Employer claims that union adherents, including Annamae Adaza, intimidated the Employer’s election observer into withdrawing as observer and obliging it to choose a substitute. In support of this objection, a declaration by Personnel Manager Sanchez was submitted, which states that on January 31, 1998, Marilou “Lulu” Thomson, an assistant in the personnel office, told her that Adaza told Thomson that if she served as observer, Adaza and others would vote for the Joint Petitioners. Sanchez further states that, as a result, Thomson was replaced as an employer observer.

The Employer challenged the ballot of Adaza on the basis that she is a supervisor. As shown above with regard to the challenges, the Joint Petitioners have stipulated to the supervisory status of Adaza. Therefore, not only would Adaza not have

been permitted to be an election observer for the Employer, but the Employer is objecting to the conduct of an individual who is its own representative. It is settled that a party to an election is ordinarily estopped from relying on the misconduct of its own supervisors or agents as objectionable. *B. J. Titan Service Co.*, 296 NLRB 668 (1989); *Republic Electronics*, 266 NLRB 852 (1983).<sup>4</sup> I therefore overrule this objection.

#### Conclusion

For the reasons set forth above and based upon the investigation as a whole, I have sustained the challenges to the ballots of Annamae Adaza, Marilou Dela Cruz, Gloria Guterrez, Cerlito Hipolito, Rosita Pangilinan, Antonia Rabe, Rina Robles, and Luisa Santiago. Further, I have overruled all the Employer’s objections.

#### Certification of Representative

As the revised tally of ballots set forth above shows that the Joint Petitioners have received a majority of the valid votes counted, I hereby find that the Joint Petitioners are the certified representative of the unit employees.

#### APPENDIX B

(Newspaper article January 30, 1998)

#### UNION DECRIES ‘DIVISIVE’ TACTICS BY EMPLOYERS

By Jojo Dass

Variety News Staff

Local 5 yesterday called for unity among hotel workers in the face of what it claimed as “dividing tactics” employed by owners who have resorted to hiring Nepalese nationals supposedly to break an “overwhelming” vote for unions.

“It is becoming a racial thing,” said Local 5 spokesperson Vic Perez.

Perez claimed Filipino workers have been known to be pro-union advocates.

Therefore, he said, it is highly likely that hotels and establishments with a large number of Filipino employees may vote for the union.

“They (hotel management officials) are trying to break this pattern that is why we call on all workers to unite,” said Perez.

Local 5 suffered a humiliating defeat during the recent election at the Hyatt Regency Hotel where workers voted 233 to 47 against the union.

The entry of a number of Nepalese workers as well as a larger resident worker population in the hotel’s workforce, according to Perez, is “one big factor” for the defeat.

Perez said the Feb. 5 union election in Dai Ichi hotel is “more promising” to Local 5 because “Filipinos dominate” the establishment’s 300 workforce.

Perez said the hiring of non-resident workers other than Filipinos is becoming a trend in the hotel industry.

He however failed to give an estimate on the number of Nepalese and other non-Filipino foreign nationals currently employed.

<sup>3</sup> Even if the statement had constituted an ethnic attack, to require a rerun election, it would also have to be shown that ethnic appeals constituted a significant aspect of a party’s campaign, another factor not present in this case. See *Beatrice Grocery Products*, 287 NLRB 302, 302 (1987).

<sup>4</sup> The exception to this rule involves the party’s causing an employee to miss the election, circumstances not present in this case. *Republic Electronics*, supra, 266 NLRB at 853.

"It's still a small percentage (of the total workforce)...they (hotel management officials) are doing it in an experimental fashion," he explained.

Ron Sablan, President of the Hotel Association of the Northern Mariana Islands, refuted Perez' claims saying the hiring of Nepalese nationals came about following difficulties encountered in bringing in Filipinos.

Sablan was referring to new restrictive measures imposed by the Philippine government on the deployment of Filipino workers abroad.

"The hiring policy has nothing to do with the union," said Sablan.

"The unions came come up with accusations...reasons on why they are failing."

"The workers have learned that basically they have nothing to gain from unions. The laws and their contracts already protect them so there's no need for unions," Sablan stressed.

"The union is not about nationality," agreed Josephine Mesta, Hyatt Human Resource Director.